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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,695	09/10/2003	Scott A. Abfalter	94022.8300	7542
86244 7590 02/15/2011 Snell & Wilmer L.L.P., (Komaromy) One Arizona Center 400 East Van Buren Street Phoenix, AZ 85004-2202				
EXAMINER WANG, JUE S				
ART UNIT 2193		PAPER NUMBER		
NOTIFICATION DATE 02/15/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/659,695

Applicant(s)

ABFALTER ET AL.

Examiner

JUE WANG

Art Unit

2193

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: _____
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193

/JUE WANG/
Examiner, Art Unit 2193

Continuation of 3. NOTE: The amendments made to the independent claims 1, 16, 27, and 39 require the Examiner to perform additional search and examination. For example, the new limitation of "receiving ... information identifying a currently running software and information related to a staged software to be loaded on a restart of a software-defined radio device" as similarly recited in claims 1, 16, 27, and 39 further limits the scope of the claims.

Additionally, Examiner notes that there does not appear to be support in the specification for the amended limitation of "transferring ... in response to said staged software being improper, software directly to said software-defined radio device from a software server to create transferred software". The specification only recites "a replacement version of the software can be stored and/or staged for implementation ... the SDR device 140 can begin using the replacement version of the software on a next scheduled restart of the SDR device 140" (paragraph [0033]) and "the SDR device 140 can quickly revert to the preceding version of the software if an error is encountered with the replacement version" (paragraph [0034]). The specification appear to teach that the staged version is the replacement version and only teaches reverting back to the preceding version if an error is encountered with the replacement version. The specification does not teach transferring a transferred software in response to said staged software being improper. Instead, the specification appears to recite that the staged software is the transferred software. The specification recites "if the replacement version of the software 115 were to be corrupted at runtime, the runtime copy can be replaced with a fresh copy of the software." (paragraph [0036]). This description in the specification appears to correspond to the limitation "transferring, ... a back-up copy of said transferred software that is executed in response to runtime errors, wherein said runtime errors are generated by executing said transferred software". The amended limitations appear to be inconsistent with the description provided in the specification since it is not clear how the transferred software and the staged software are the same when the transferred software is recited in the claim as being transferred in response to the staged software being improper. Applicant is requested to clarify these issues if the amended limitations are maintained in a subsequent response.